Advocacy Model for Combined Process (Med-Arbitration)-Based Resolution of Industrial Relations Conflicts Between Trade Unions and Businesses

Siti Nurhayati*[1], Fitri Rafianti[2], Emi Wakhyuni[3], Willyam Lorencius Hutabarat[4]
sitinurhayati@dosen.pancabudi.ac.id

[1,2] Faculty of Law, Universitas Pembangunan Panca Budi Medan, Indonesia
[3,4] Faculty of Management, Universitas Pembangunan Panca Budi Medan Indonesia

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Abstract
In the process of settling labor-management conflicts, trade unions play a crucial role for employees, employers, and trade unions themselves. According to Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement, disputes about labor relations are settled through Bipartite, Tripatrit (labor relations mediation, conciliation, and arbitration), and if non-litigation legal remedies (apart from arbitration) fail, the matter is then brought before the Industrial Relations Court. Due to its proven effectiveness in resolving commercial conflicts, the combined process (med-arb) idea is thought to facilitate dispute resolution in industrial relations problems. Two issues are addressed in this research: the idea of combined process (med-arb) as it applies to the resolution of labor-union disputes with employers and the idea of legal certainty in the process of using combined process (med-arb) to resolve labor-union disputes with employers.

1. Introduction

The freedom of assembly and association for employees in a trade union forum is guaranteed by the government. It is intended that through trade unions, employers would be made aware of workers' goals and that this will help to balance the relationship between employers and employees.[1] This represents a potential avenue for enhancing labor relations inside the organization.

[1] Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi* (Jakarta: Sinar Grafika, 2014).

Employers and companies make up the nation's economic ring. There exist industrial ties between employers and employees in these kinds of businesses. But there are times when the working relationship between employers and employees is not harmonious. Conflicts might arise. Disputes that may arise in the employment connection between employers and employees are referred to as industrial relations disputes. Article 2 of Law No. 2 of 2004 about the Settlement of Industrial Relations problems (PPHI Law) lists the following categories of industrial relations problems: (a) conflicts of interest; (b) disputes about rights; (c) disputes regarding terminations (layoffs); and (d). disagreements between one trade union and another within a single corporation.[2]

A formal prerequisite for resolving disputes in industrial relations is mediation. Compared to arbitration and conciliation, which are not able to handle all forms of industrial relations problems, mediation is a simple, quick, and affordable method of settlement that can settle all four types of disputes. Only interest disputes and disagreements between trade unions or trade unions in a single firm are resolved by arbitration in industrial relations, outside of the

Industrial Relations Court (PHI), with written consent from the disputing parties.[3]

One of the procedures offered by PPHI Law and Law Number 22 of 1957 concerning Labor Dispute Settlement (PPP Law) is arbitration. A peaceful process or non-litigation option is offered by arbitration (outside the court). This indicates that the arbitration process employs a win-win approach in which both parties gain or succeed and is conducted by arbitrators or arbitrator teams operating outside of the legal system. Comparing the arbitration process to the judicial process in industrial relations courts, the parties can obtain a straightforward, expeditious, and affordable settlement. Arbitration is therefore a calm process that can maintain the parties' relationship and help them reach a peaceful agreement. Arbitration is a peaceful process that can be used to settle employment issues, but in practice, parties have never used arbitration to settle their differences because it was first governed by the PPP Law, which has since been superseded by the PPHI Law.[4]

To create a consensus, disputes must be settled through thoughtful, bilateral conversations between the parties. If bipartite settlement, mediation, and consolation are unsuccessful, PHI dispute resolution is the last option. But in actuality, these duties on the side of the parties (employers and employees) are occasionally merely invoked as a formality. The parties decided to use PHI to settle labor conflicts. There are still a lot of issues and complaints with PHI's status as a special court within the main legal system that was established in tandem with the PPHI legislation.

[2] Rika Jamin Marbun, 'Use of the Bipartite System in Industrial Relations', *BIRCI: Budapest International Research and Critics Institute-Journal*, 4.3 (2021), 13–23 <https://doi.org/https://doi.org/10.33258/birci.v4i3.2463>.

In any interaction involving legal subjects both natural beings and legal entities conflicts or disputes frequently arise. The breadth of events and conflicts is expanding in tandem with the complexity of people's lifestyle patterns. Industrial relations problems are among the most common types of disputes. Conflicts over labor relations typically arise between employers and employees or between labor organizations and business organizations. The author of this essay focuses on the resolution of conflicts between businesses and trade unions.[5]

This study aims to address the following issue: How is the notion of combined Process (Med-arb) utilized in settling labor-union conflicts with employers? And how definite is it legally that conflicts arising from labor-management relations between employers and unions will be settled through the combined procedure (med-arb)?

2. Research Method

The researchers in this study employed a qualitative research design. Qualitative approaches are described by Bogdan and Taylor as research techniques that yield descriptive data in the form of people's spoken or written words and observable behavior. The study's descriptive verbal data rather than numerical data discusses the Settlement of Industrial Relations Disputes Between Trade Unions and Companies through a Combined Process (Med-Arbitration), which is why qualitative research was used in this investigation.[6] Legal research is classified into two research paradigms, namely normative legal research and empirical legal research, which are important to understand when discussing legal science in general. Empirical legal research is the research model employed in this work. This study uses combined techniques used by multiple enterprises in North Sumatra as primary data to resolve labor relations conflicts between unions and companies, departing from actual behavior observed in field research locations. This is in line with Abdulkadir Muhammad's definition of empirical legal research, which states that real behavior obtained from field study locations serves as main data rather than written positive legislation (laws and regulations), which is used as secondary data. Therefore, legal research that aims to understand the law in its truest sense and investigates how the law functions in society is known as empirical legal research. The primary factor in qualitative research that determines where to find pre-study data is the study's location. The location of the research target is crucial to supporting the ability to deliver reliable information because it aids in determining the data collected.[7] The SUMUT Disnaker Jalan Dormitory No. 143, the Medan City Manpower Office, located at Jalan K.H. Wd Hasyim No. 14, and the Manpower and Transmigration Office, located at Jalan Williem Iskandar No. 331, were the study's focal points.

[3] Rr. Putri A. Priamsari, 'Exception of Mediation Procedure in Bankruptcy Cases According to Supreme Court Regulation Number 1 Year 2016', *Law Reform*, 17.1 (2021), 13–23.
[4] Ane Permatasari, Muhammad Iqbal, and Akhmad Habibullah, 'Industrialization Relation Dispute Settlement Model in Indonesia', in *International Conference on Sustainable Innovation Track Humanities Education and Social Sciences*, 2021, pp. 194–99.
[5] Emi Wakhyuni, Siti Nurhayati, and Abdi Setiawan, 'Analysis of Wages and Severance Pay During the Covid-19 Pandemic Reviewed from Labor Law', *Ilomata International Journal of Management*, 3.3 (2022), 319–36 <https://doi.org/10.52728/ijjm.v3i3.480>.

There has never been a study that addresses the Advocacy Model for Resolving Industrial Relations Disputes Between Trade Unions and Companies through Combined Process (Med-Arbitration), which is why the researcher selected this location for the study. Research data can be divided into two categories according to the source: Primary Data To further investigate the information gathered from earlier interviews, researchers also spoke with representatives from the North Sumatra Disnaker's industrial relations dispute resolution section, the Medan City Manpower Office, and the Manpower and Transmigration Office. Secondary data is information that researchers have gathered from a variety of already-existing sources. One can access secondary data from a number of sources, including books, journals, papers, and the Central Bureau of Statistics (BPS). Acceptable data collection procedures are necessary to provide acceptable data, as they are a crucial component in the research process. It will be challenging for researchers to gather standard study data if they cannot collect data. To gather data for this study, researchers employ several methods, including interviewing.[8] To make the features of the data easily understood and helpful for solving issues about research activities, data analysis techniques can be understood as a means of turning the data into information. The following are the steps involved in performing data analysis for this study; Data Reduction, Display Data, Conclusion drawing and verification.[9]

3. Results and Discussion

The Concept of Combined Process (Med-Arb) in the Settlement of Industrial Relations Disputes Between Trade Unions and Employers

Workers' freedom to organize is an expression of their fundamental human rights, as stated in Article 28 of the 1945 Constitution's 4th Amendment. The legal ability to organize and establish trade unions is granted to laborers by the right of association. Both nationally and internationally, labor legislation and several international labor treaties control the establishment and operations of trade unions in industrial relations.[10]

The proscription "every worker has the right to form and become a member of a trade union/trade union" found in Article 104 of Law No. 13 of 2003 regulating Manpower, serves as legal justification for the formation of trade unions. Workers express their concerns through trade unions. An organization that always takes into account the needs of its members is a trade union.

[6] Mamik, *Metodologi Kualitatif* (Surabaya: Zifatama Publisher, 2014).
[7] Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Perss, 2020).

Due to the strong relationship between the interests of employers and employees, industrial relations frequently give rise to disagreements and even conflicts between the two sides. Layoffs, terminations of employment, and the unfulfilled rights of workers are some of the factors that lead to issues or disputes in labor-employer relations. However, disputes between two unions within a corporation due to members' dual membership can also result in industrial relations issues between workers themselves. Finding the best solution to issues or industrial relations disputes between employees and employers or employees with employees is vital since these conflicts occur frequently in the field of labor relations.[11]

The parties may choose to involve a third party in the settlement, one supplied by the state or the parties themselves, if they are unable to resolve the dispute amicably. The judiciary is typically the formal forum offered by the state for the resolution of disputes in contemporary societies that are home to state-shaped public power institutions. The PPHI Law is one of several modifications that have been enacted in response to the Indonesian people's contemporary need for a normative settlement of industrial relations problems.[12]

The PPHI Law was created with the understanding that the community no longer needed Law Number 22 of 1957 concerning Labor Dispute Settlement and Law Number 12 of 1964 concerning Termination of Employment in Private Companies. However, in the age of industrialization, the problem of industrial relations disputes is growing more complex, necessitating the need for quick, accurate, equitable, and affordable institutions and mechanisms for resolving disputes in these areas. It is envisaged that the PPHI Law will enable the realization of Pancasila principles through harmonious, dynamic, and fair labor relations.

The idea that the PHI system lengthens the dispute resolution process and lacks legal certainty has led to criticism of PHI-based dispute resolution. The productivity of the company is disrupted as a result. Parties who object to PHI dispute resolution seek the repeal of the PHI Law and the establishment of appropriate regulations to govern industrial relations dispute resolution organizations that can implement a dispute resolution system that satisfies the requirements of being quick, easy, affordable, and capable of defending workers' rights to decent work and a living wage. The parties seeking the dissolution of PHI demonstrate that, insofar as there are enhancements or revisions to the determination of ad hoc committees, certainty of time, and certainty of execution, special courts for labor dispute resolution, such as P.4.P / P.4.D as governed by Law Number 22 of 1957, are quite ideal.

[8] Firdaus and Fakhry Zanzan, *Application of Research Methodology* (Yogyakarta: Deepublish, 2018).
[9] Umrati and Hengki Wijaya, *Analisis Data Kualitatif Teori Konsep Dalam Penelitian Pendidikan* (Jakarta Timur: Sekolah Tinggi Theologia Jaffray, 2020).
[10] Yunus Yunus, 'Freedom of Association for Labours in the Industrial Relationship', *Journal of Law and Legal Reform*, 2.3 (2021), 449–58 <https://doi.org/10.15294/jllr.v2i2.46501>.
[11] Kadek Agus Sudiarawan and Putu Ade Harriestha Martana, 'Examining The Regulation Of Independent Procedure At The Indonesian Industrial Relations Court', *Kanun Jurnal Ilmu Hukum*, 24.3 (2023), 212–29 <https://doi.org/10.24815/kanun.v24i3.23251>.

Not only must formal factors (procedures) be taken into account in industrial relations problems, but also material aspects (substance). For the PHI Law's procedures for settling PHI to be followed, they are as follows:

1. Bipartite Negotiations: These refer to discussions between two parties, such as employers and employees or trade unions. The parties create a collective agreement, which is then filed with the local PHI if bipartite negotiations result in a settlement agreement. The parties in dispute must follow the steps for resolving the Tripartite Negotiations if an agreement cannot be reached during the negotiating process.
2. Tripartite negotiation is the process of engaging in talks between employers and employees while using third parties to mediate the settlement of protected health information. Arbitration, conciliation, and mediation are three methods of conducting tripartite talks.
   a. A resolution through discussion mediated by one or more Ministry of Manpower mediators involves, among other things, disagreements over rights, interests, layoffs, and conflicts between trade unions within the same enterprise. If all parties agree during mediation, a collective agreement will be created and filed in PHI. If a compromise cannot be reached, the mediator will provide a formal suggestion. The recommendation is registered with PHI by the parties if it is approved. However, if any of the parties or just one of them rejects the suggestion, the party that does so may use PHI to bring a lawsuit against the other party.
   b. Conciliation is the process of reaching a settlement through discussion mediated by a conciliator chosen by the parties. According to the PHI Law, the conciliator is a private intermediary employee rather than a Ministry of Agriculture official. Similar to a mediator, the conciliator works to bring the parties together and forge a compromise. The Conciliator also provides a product in the form of recommendations if an agreement cannot be reached.
   c. A written agreement stating that the parties agree to submit the matter to the arbitrators can be used to resolve disputes between trade unions within a firm. a. Arbitration is the process of resolving conflicts outside of PHI regarding disputes of interest. The parties to the dispute will choose the arbitrators themselves from a list provided by the Minister of Manpower, and the arbitral ruling will be final and binding on them.
3. The Court of Industrial Relations. Parties have the option to sue the Industrial Relations Court if they reject the counsel of conciliators and mediators. The Industrial Relations Court's responsibilities include receiving applications, carrying out Collective Agreement violations, and making decisions in PHI cases, including disputes involving layoffs

[12] Siti Nurhayati, 'Implementation Of The Principle Of Equality Before The Law In The Settlement Of Industrial Relations Disputes In The Industrial Relations Court', *International Journal of Society and Law*, 1.1 (2023), 11–20 <https://doi.org/10.61306/ijsl.v1i1.13>.

Indonesian society has long had its ways of dealing with problems of dissent or disagreement. Dispute resolution carried out by the Indonesian people has diversity, but in principle, the Indonesian people use a deliberative system to reach a consensus. Combined process (med arbitration) is the settlement of disputes outside the court using more than one settlement mechanism or in other words a combination of two or more settlement mechanisms in one arbitration proceeding. Med-arbitration is a combination of mediation and arbitration. The parties jointly agree on a settlement in this manner, but authorize a neutral third party to decide if mediation is unsuccessful.

The existence of arbitration in Indonesia is very interesting to study its character because although it is often referred to as the adjudication process, it is a merger process between mediation and adjudication. The nature of adjudication is evident from the arbitrator's authority to make binding decisions for both parties to the dispute. The nature of mediation is seen that although the arbitral award is binding and final, it remains in the hands of the disputing parties based on an agreement made before the arbitration proceedings began.[14] Dispute resolution with the concept of combined process (Med-Arbitration) is well known and developed in the field of international trade law. This concept is a new dispute resolution method that combines two dispute resolution methods into one settlement process. This merger concept is often called the Hybrid method. “Hybrid processes combine two different roles for the neutral. An example of a hybrid process is med/arb (mediation/arbitration). Where the third party neutral initially mediates between the parties and attempts to help the parties reach resolution. In the event the parties fail to resolve the dispute, the third party neutral will then assume the role of arbitrator and determine the outcome of the dispute on behalf of the parties”.[15]

The use of the Hybrid Method as a dispute resolution method in Indonesia is still very new, the Indonesian National Arbitration Board (BANI) only used its rules and procedures in 2006 although it developed them in 2003. The hybrid method used by BANI is Arb-Med-Arb. Some forms of hybrid process are combined mediation-arbitration, arbitration-mediation, and arbitration-mediation-arbitration. The author argues that the dispute resolution process using the combined Process (med-arb) method can also be carried out in resolving industrial relations disputes considering that the UU PPHI also regulates dispute resolution through mediation and arbitration. However, what needs to be remembered is that the use of this combined process (med-arb) must be agreed upon by the parties, both before the dispute occurs and when a dispute occurs, as well as in the case of choosing a mediator. Some argue that combined proceedings are better than pure arbitration, as Edna Sussman points out, quoting Dereck Roebuck "Everywhere in the Ancient Greek world, including Ptolemaic Egypt, arbitration was normal and in arbitration the mediation element was primary".

[13] Agus Pramono, ‘Settlement of Industrial Relations Disputes and Termination of Work Relations According to the Applicable Legislation’, *Walisongo Law Review (Walrev)*, 2.2 (2020), 169–94 <https://doi.org/10.21580/Walrev/2020.2.2.6671>.

[14] Siti Nurhayati, Onny Medaline, and Emi Wahyuni, 'Synchronization of Outsourcing Arrangements in Employment Law with Human Rights and Ratification of the International Covenant of Economic, Social and Cultural Rights', *International Journal of Research and Review*, 9.6 (2022), 91–103 <https://doi.org/10.52403/ijrr.20220614>.
[15] Rika Jamin Marbun, Abdurrahman Harits Ketaren, and Siti Nurhayati, 'Government Authority in Regulating Employment Relations between Employers and Workers/Laborers in Indonesia', *International Journal Of Humanities Education and Social Sciences (IJHESS)*, 2.3 (2022) <https://doi.org/10.55227/ijhess.v2i3.307>.

A third party who has previously acted as a mediator may become an arbitrator (if qualified) of the arbitration proceedings and promptly render the arbitral award. If the parties agree to proceed with dispute resolution through arbitration, the mediator will then create a memorandum of agreement stating they submit their dispute resolution to be resolved by arbitration. With the note in the memorandum also stated the results that have been achieved in the mediation process and will be obeyed by the parties. Unlike the memorandum of agreement in the traditional mediation process which is not binding, the memorandum of agreement that has been prepared by the mediator in the combined process (med-arb) is specifically made based on the agreement of the parties, so that it will bind the parties to the arbitration process.[17]

The Concept of Legal Certainty for Settlement of Industrial Relations Disputes Between Trade Unions and Employers through a Combined Process

The concept of resolving industrial relations disputes between trade unions and companies through the combined process (med-arbitration) has contributed to the role of dispute resolution in the field of civil procedural law, especially in the legal policy of industrial relations dispute resolution. This dispute resolution concept is expected to provide a new concept in the settlement of industrial relations disputes so that interested parties / disputants get a win-win solution and legal certainty.

The existence of the Industrial Relations Court as a special court under the general judicial environment established in conjunction with the existence of the PPHI Law in fact still draws criticism and problems. The issue of dispute resolution of industrial relations disputes is considered to still not facilitate workers' rights. Workers expect the right rules to regulate industrial relations dispute resolution institutions that can realize a settlement system that meets the criteria of fast, simple, low-cost, so legal policies are needed to resolve them. As explained earlier, since the enactment of the PPHI Law, institutions that handle the settlement of industrial relations disputes consist of: bipartite, mediation, conciliation, arbitration, and the Industrial Relations Court (PHI). In accordance with the provisions of Article 1 Number 1 of the UU PPHI, if there is no agreement between the parties to the dispute, as one of the efforts that can be

[16] Daniel Ritonga, Achmad Fitrian, and Gatut Hendro, 'Execution Of Decisions Of The Industrial Relations Court With Permanent Legal Force (INKRACHT)', *Policy, Law, Notary and Regulatory Issues (POLRI)*, 1.3 (2022), 35–44.

done by the parties before the case reaches PHI, the Mediation Institution can be used. Cases handled by mediation institutions are rights disputes, interest disputes, Termination of Employment (PHK) disputes, and disputes between trade unions or trade unions in only one company. Mediators in the context of resolving cases mediate or become peacemakers who can mediate in the settlement of industrial relations disputes.[18]

Based on the UU PPHI, what is meant by Industrial Relations Mediation, hereinafter referred to as mediation, is the settlement of rights disputes, interest disputes, termination disputes, and disputes between trade unions / trade unions in only one company through deliberation mediated by one or more neutral mediators, and referred to as Industrial Relations Mediators hereinafter referred to as mediators are employees of government agencies who responsible in the field of labor that meets the requirements as a mediator determined by the Minister to be in charge of mediating and has the obligation to provide written advice to the disputing parties to resolve rights disputes, interest disputes, termination disputes, and disputes between trade unions / trade unions in only one company. Industrial Relations Arbitration, hereinafter referred to as arbitration according to the UU PPHI, is the settlement of a dispute of interest, and disputes between trade unions / trade unions in only one company, outside the Industrial Relations Court through a written agreement from the disputing parties to submit the dispute resolution to the arbitrator whose decision is binding on the parties and is final. Meanwhile, the Industrial Relations Arbitrator arbitrator, hereinafter referred to as an arbitrator, is one or more selected by the disputing parties from the list of arbitrators determined by the Minister to render an award on disputes of interest, and disputes between trade unions / trade unions in only one company submitted for resolution through arbitration whose decision is binding on the parties and is final.

The application of combined process (med-arb) in the settlement of industrial relations disputes between trade unions and companies is very possible because there is already a legal umbrella as its basis, namely Law No.48 of 2009 concerning Judicial Power, namely Article 38 paragraphs (1), (2), which reads: (1) "In addition to the Supreme Court and its subordinate judicial bodies and the Constitutional Court, there are other bodies whose functions are related to judicial power". (2) "Functions related to judicial power as referred to in paragraph (1) include out-of-court settlements".[19]

[17] Alfath Sartanto, Aristya Windiana Pamuncak, and Marisa Kurnianingsih, 'Settlement of Industrial Relations Disputes Through Peace Agreements: A Case Study of Termination of Employment at PT. Tyfountex Indonesia', in *International Conference on Community Empowerment and Engagement*, 2021, pp. 263–71.
[18] Ismi Pratiwi Podungge and others, 'The Role of Trade Unions in Dispute Settlement of Unilateral Termination of Employment Conducted by the Company Against Employees', *Jurnal Hukum Lex Generalis*, 2.5 (2021), 384–99 <https://doi.org/10.56370/jhlg.v2i5.51>.

Theoretically, combined process can be used by the parties to the dispute as long as it is based on an agreement between the parties to resolve the dispute to an independent third party and is believed to be able to resolve the dispute between the parties. The parties have private autonomy to express their will to resolve their disputes by combined process (med-arb) as long as it does not conflict with the UUPPHI which specifically regulates the settlement of industrial relations disputes.

4. Conclusion

The concept of combined process (med-arb) applied in the settlement of industrial relations disputes between trade unions and employers can be done because the UUPPHI also regulates arbitration and mediation. Combined process (med-arb) can provide time effectiveness, and measurable costs and is more effective than the settlement method by arbitration alone or through the Industrial Relations Court. Settlement of industrial relations disputes between unions and employers through a combined process (med-arb) can provide legal certainty because the decision can be the parties and can be executed in the Industrial Relations Court.

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